

EXTRADITION

Treaty signed at Washington April 6, 1904

Senate advice and consent to ratification April 26, 1904

*Spanish text amended by protocol of December 6, 1904*¹

Ratified by Cuba January 16, 1905

Ratified by the President of the United States January 24, 1905

Ratifications exchanged at Washington January 31, 1905

Proclaimed by the President of the United States February 8, 1905

Entered into force March 2, 1905

*Article II supplemented by additional treaty of January 14, 1926*²

33 Stat. 2265; Treaty Series 440

The United States of America and the Republic of Cuba, being desirous to confirm their friendly relations and cooperate to promote the cause of justice, have resolved to conclude a treaty for the extradition of fugitives from justice between the United States of America and the Republic of Cuba, and have appointed for that purpose the following Plenipotentiaries:

The President of the United States of America, John Hay, Secretary of State of the United States of America; and

The President of the Republic of Cuba, Gonzalo de Quesada, Envoy Extraordinary and Minister Plenipotentiary of the Republic of Cuba to the United States of America;

Who, after having communicated to each other their respective full powers, found in good and due form, have agreed upon and concluded the following:

ARTICLE I

The Government of the United States of America and the Government of the Republic of Cuba mutually agree to deliver up persons who, having been charged as principals, accomplices or accessories with or convicted of any crimes or offenses specified in the following article, and committed within the jurisdiction of one of the high contracting parties, shall seek an asylum or be found within the territories of the other: Provided that this shall only be done upon such evidence of criminality as, according to the laws of the

¹ TS 441, *post*, p. 1134.

² TS 737, *post*, p. 1136.

place where the fugitive or person so charged shall be found, would justify his or her apprehension and commitment for trial if the crime or offense had been there committed.

ARTICLE II³

Extradition shall be granted for the following crimes and offenses:

1. Murder, comprehending the offenses expressed in the Penal Code of Cuba as assassination, parricide, infanticide and poisoning; manslaughter, when voluntary; the attempt to commit any of these crimes.

2. Arson.

3. Robbery, defined to be the act of feloniously and forcibly taking from the person of another money, goods, documents, or other property, by violence or putting him in fear; burglary; housebreaking and shopbreaking.

4. Forgery, or the utterance of forged papers, or falsification of the official acts or documents of the Government or public authority, including courts of justice, or the utterance or fraudulent use of any of the same.

5. The fabrication of counterfeit money, whether coin or paper, counterfeit titles or coupons of public debt, bank-notes, or other instruments of public credit; of counterfeit seals, stamps, dies and marks of state or public administration, and the utterance, circulation or fraudulent use of any of the above mentioned objects.

6. Embezzlement by public officers or depositaries; embezzlement by persons hired or salaried to the detriment of their employers; obtaining money, valuable securities or other personal property by false devices, when such act is made criminal by the laws of both countries and the amount of money or value of the property so obtained is not less than two hundred dollars in gold.

7. Fraud or breach of trust (or the corresponding crime expressed in the Penal Code of Cuba as defraudation) by a bailee, banker, agent, factor, trustee, or other person acting in a fiduciary capacity, or director or member or officer of any company, when such act is made criminal by the laws of both countries and the amount of money or the value of the property misappropriated is not less than two hundred dollars in gold.

8. Perjury; subornation of perjury.

9. Bribery; defined to be the giving, offering or receiving of a reward to influence one in the discharge of a legal duty.

10. Rape; bigamy.

11. Wilful and unlawful destruction or obstruction of railroads, trains, bridges, vehicles, vessels or other means of transportation or public or private buildings, when the act committed endangers human life.

12. Crimes committed at sea, to wit:

³ For an additional treaty supplementing art. II, see TS 737, *post*, p. 1136.

- (a) Piracy, by statute or by the law of nations.
- (b) Revolt, or conspiracy to revolt, by two or more persons on board a ship on the high seas against the authority of the master.
- (c) Wrongfully sinking or destroying a vessel at sea, or attempting to do so.
- (d) Assaults on board a ship on the high seas with intent to do grievous bodily harm.

13. Crimes and offenses against the laws of both countries for the suppression of slavery and slavetrading.

14. Kidnapping of minors or adults, defined to be the abduction or detention of a person or persons in order to exact money from them or their families, or for any other unlawful end.

15. Larceny, defined to be the theft of money, effects, documents, horses, cattle, live-stock or any other movable property of the value of more than fifty dollars.

16. Obtaining by threats of doing injury, money, valuables or other personal property.

17. Mayhem and any other wilful mutilation causing disability or death.

Extradition is to take place for participation in any of the crimes and offenses mentioned in this treaty not only as principal or accomplices, but as accessories in any of the crimes or offenses mentioned in the present article, provided such participation may be punished, in the United States as a felony and in the Republic of Cuba by imprisonment, hard labor or capital punishment.

ARTICLE III

Requisitions for the surrender of fugitives from justice shall be made by the diplomatic agents of the contracting parties, or in the absence of these from the country or its seat of government, may be made by the superior consular officers.

If the person whose extradition is requested shall have been convicted of a crime or offense, a duly authenticated copy of the sentence of the court in which he was convicted, or if the fugitive is merely charged with a crime or offense, a duly authenticated copy of the warrant of arrest in the country where the crime or offense has been committed, and of the depositions or other evidence upon which such warrant was issued, shall be produced. In both cases whenever possible all facts and data necessary to establish the identity of the person whose extradition is sought shall also be presented.

The extradition of the fugitives under the provisions of this treaty shall be carried out in the United States and in the Republic of Cuba, respectively, in conformity with the laws regulating extradition for the time being in force in the State in which the demand for the surrender is made.

ARTICLE IV

Where the arrest and detention of a fugitive in the United States are desired on telegraphic or other information in advance of the presentation of formal proof, complaint on oath, as provided by the statutes of the United States, shall be made by an agent of the Government of Cuba before a judge or magistrate authorized to issue warrants of arrest in extradition cases.

When, under the provisions of this article, the arrest and detention of a fugitive are desired in the Republic of Cuba, the proper course shall be to apply to the Foreign Office, which will immediately cause the necessary steps to be taken in order to secure the provisional arrest or detention of the fugitive.

The provisional detention of a fugitive shall cease and the prisoner be released if a formal requisition for his surrender accompanied by the necessary evidence of his guilt has not been produced under the stipulations of this Treaty, within two months from the date of his provisional arrest or detention.

ARTICLE V

Neither of the contracting parties shall be bound to deliver up its own citizens under the stipulations of this Treaty.

ARTICLE VI

A fugitive criminal shall not be surrendered if the offense in respect of which his surrender is demanded be of a political character, or if it is proved that the requisition for his surrender has, in fact, been made with a view to try or punish him for an offense of a political character.

An attempt against the life of the head of a foreign government or against that of any member of his family when such attempt comprises the act either of murder, assassination, or poisoning, shall not be considered a political offense or an act connected with such an offense.

No person surrendered by either of the contracting parties to the other shall be triable or tried, or be punished, for any political crime or offense, or for any act connected therewith, committed previously to his extradition.

If any question shall arise as to whether a case comes within the provisions of this article, the decision of the authorities of the government on which the demand for surrender is made, or which may have granted the extradition shall be final.

ARTICLE VII

Extradition shall not be granted, in pursuance of the provisions of this Treaty if legal proceedings or the enforcement of the penalty for the act committed by the person claimed has become barred by limitation, according to the laws of the country to which the requisition is addressed.

ARTICLE VIII

No person surrendered by either of the contracting parties to the other shall, without his consent, freely granted and publicly declared by him, be triable or tried or be punished for any crime or offense committed prior to his extradition, other than that for which he was delivered up, unless the said person shall have been at liberty to leave the country for a month after having been tried, and in case of conviction, a month after having served sentence or being pardoned.

ARTICLE IX

All articles found in the possession of the person to be surrendered, whether being proceeds of the crime or offense, or being material as evidence in making proof of the crime or offense, shall, so far as practicable, and in conformity with the laws of the respective countries, be seized and surrendered with his person. Nevertheless the rights of third parties with regard to such articles shall be duly respected.

ARTICLE X

If the individual claimed by one of the contracting parties, in pursuance of the present Treaty, shall also be claimed by one or several other powers on account of crimes or offenses committed within their respective jurisdictions, his extradition shall be granted to the state whose demand is first received, unless the government from which extradition is sought is bound by treaty to give preference to another.

If the said individual shall be indicted or convicted in the country from which extradition is sought, his extradition may be deferred until the proceedings are abandoned, the individual set at liberty or discharged or has served his sentence.

ARTICLE XI

The expenses incurred in the arrest, detention, examination and delivery of fugitives under this treaty shall be borne by the State in whose name the extradition is sought: Provided, that the demanding government shall not be compelled to bear any expense for the services of such public officers of the government from which extradition is sought as receive a fixed salary; and, provided, that the charge for the services of such public officers as receive only fees or perquisites shall not exceed their customary fees for the acts or services performed by them had such acts or services been performed in ordinary criminal proceedings under the laws of the country of which they are officers.

ARTICLE XII

The present treaty shall take effect on the thirtieth day after the date of the exchange of ratifications.

The ratifications of the present treaty shall be exchanged at Washington as soon as possible, and it shall remain in force for a period of six months after either of the contracting governments shall have given notice of a purpose to terminate it.

In witness whereof, the respective Plenipotentiaries have signed the above articles both in the English and Spanish languages, and hereunto affixed their seals.

Done in duplicate, at the City of Washington this sixth day of April, nineteen hundred and four.

JOHN HAY	[SEAL]
GONZALO DE QUESADA	[SEAL]